

Introduced by Senator Morrow

February 22, 2005

An act to add Title 6 (commencing with Section 1225) to Part 3 of the Code of Civil Procedure, relating to land use regulation.

LEGISLATIVE COUNSEL'S DIGEST

SB 725, as introduced, Morrow. Land use regulation: compensation.

Existing law provides for the payment of compensation for the taking of land by eminent domain proceedings, as well as by an action by the owner in inverse condemnation, as specified.

This bill would provide that if a state or local public entity enacts or enforces a new land use regulation that restricts the use of private property or any interest therein and has the effect of reducing the fair market value of the property or interest by 25%, then the owner of the property or interest shall be paid just compensation, as specified, except with respect to certain land use regulations. By requiring a new program of local public entities, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Title 6 (commencing with Section 1225) is
2 added to Part 3 of the Code of Civil Procedure, to read:

3
4 TITLE 6. COMPENSATION FOR LAND USE
5 REGULATION
6

7 1225. (a) If a state or local public entity enacts or enforces a
8 new land use regulation that restricts the use of private real
9 property or any interest therein and has the effect of reducing the
10 fair market value of the property, or any interest therein, by 25
11 percent or more, then the owner of the property or interest shall
12 be paid just compensation.

13 (b) Just compensation shall be equal to the reduction in the fair
14 market value of the affected property interest resulting from
15 enactment or enforcement of the land use regulation as of the
16 date the owner makes written demand for compensation under
17 this section.

18 (c) This section does not apply to land use regulations that do
19 any of the following:

20 (1) Restrict or prohibit activities commonly and historically
21 recognized as public nuisances under common law. This
22 paragraph shall be construed narrowly in favor of a finding of
23 compensation under this section.

24 (2) Restrict or prohibit activities for the protection of public
25 health and safety, such as fire and building codes, health and
26 sanitation regulations, solid or hazardous waste regulations, and
27 pollution control regulations.

28 (3) Are required in order to comply with federal law.

29 (4) Restrict or prohibit the use of a property for the purpose of
30 selling pornography or performing nude dancing. However,
31 nothing in this paragraph is intended to affect or alter rights
32 provided by the California or United States Constitutions.

33 (5) Take effect prior to the date of acquisition of the property
34 by the owner or a family member of the owner who owned the
35 subject property prior to acquisition or inheritance by the owner,
36 whichever occurred first.

37 (d) Just compensation under subdivision (a) shall be due the
38 owner of the property if the land use regulation continues to be

1 enforced against the property 180 days after the owner of the
2 property makes written demand for compensation under this
3 section to the public entity enacting or enforcing the land use
4 regulation.

5 (e) Written demand for compensation under subdivision (d)
6 shall be made within two years of the enactment of the land use
7 regulation, or the date the owner of the property submits a land
8 use application in which the land use regulation is an approval
9 criteria, whichever is later.

10 (f) If a land use regulation continues to apply to the subject
11 property more than 180 days after the present owner of the
12 property has made written demand for compensation under this
13 section, the present owner of the property, or any interest therein,
14 shall have a cause of action for compensation under this section
15 in the superior court in the county in which the real property is
16 located, and the present owner of the real property shall be
17 entitled to reasonable attorney's fees, expenses, costs, and other
18 disbursements reasonably incurred to collect the compensation.

19 (g) A state or local public entity may adopt or apply
20 procedures for the processing of claims under this section, but in
21 no event shall these procedures act as a prerequisite to the filing
22 of a compensation claim under subdivision (f), nor shall the
23 failure of an owner of property to file an application for a land
24 use permit with the local government serve as grounds for
25 dismissal, abatement, or delay of a compensation claim under
26 subdivision (f).

27 (h) Notwithstanding any other provision of law or the
28 availability of funds under subdivision (i), in lieu of payment of
29 just compensation under this section, the governing body
30 responsible for enacting the land use regulation may modify,
31 remove, or not apply the land use regulation or land use
32 regulations to allow the owner to use the property for a use
33 permitted at the time the owner acquired the property.

34 (i) Claims made under this section shall be paid from funds, if
35 any, specifically allocated by the Legislature or local governing
36 body for payment of claims under this section. Notwithstanding
37 the availability of funds under this subdivision, a state or local
38 public entity shall have discretion to use available funds to pay
39 claims or to modify, remove, or not apply a land use regulation
40 or land use regulations pursuant to subdivision (h). If a claim has

1 not been paid within two years from the date on which it accrues,
2 the owner shall be allowed to use the property as permitted at the
3 time the owner acquired the property.

4 (j) For purposes of this section:

5 (1) “Family member” includes the wife, husband, son,
6 daughter, mother, father, brother, brother-in-law, sister,
7 sister-in-law, son-in-law, daughter-in-law, mother-in-law,
8 father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild,
9 grandparent, or grandchild of the owner of the property, an estate
10 of any of the foregoing family members, or a legal entity owned
11 by any one or combination of these family members or the owner
12 of the property.

13 (2) “Land use regulation” includes any statute or
14 administrative rule regulating the use of land or any interest
15 therein, comprehensive local government plans, zoning
16 ordinances, and transportation ordinances, district regional
17 framework plans, functional plans, planning goals and objectives,
18 and statutes and administrative rules regulating farming and
19 forest practices.

20 (3) “Owner” is the present owner of the property, or any
21 interest therein.

22 (k) The remedy created by this section is in addition to any
23 other remedy under the California or United States Constitution,
24 and is not intended to modify or replace any other remedy.

25 (l) If any portion or portions of this section are declared
26 invalid by a court of competent jurisdiction, the remaining
27 portions of this act shall remain in full force and effect.

28 SEC. 2. If the Commission on State Mandates determines that
29 this act contains costs mandated by the state, reimbursement to
30 local agencies and school districts for those costs shall be made
31 pursuant to Part 7 (commencing with Section 17500) of Division
32 4 of Title 2 of the Government Code.